STATE OF MICHIGAN

COURT OF APPEALS

DIANE TELESZ,

Plaintiff-Appellant,

v

PAPAGEORGIOU INVESTMENT COMPANY, INC.,

Defendant-Appellee.

UNPUBLISHED
September 16, 2003

No. 241537
St. Clair Circuit Court
LC No. 01-001917-NO

Before: Fitzgerald, P.J., and Griffin and Saad, JJ.

PER CURIAM.

Plaintiff appeals as of right the order dismissing her premises liability action against defendant. The trial court granted summary disposition pursuant to MCR 2.116(C)(10) on the basis that any danger was open and obvious. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant owns Seros Restaurant. The restaurant is located in a strip mall and is the last business at one end of the mall. Customers can park in a parking lot directly in front of the restaurant or on the side of the building. The parking spots on the side of the building are specifically designated for handicap use. An asphalt ramp near these parking spots connects the parking lot to the front sidewalk. The edges of the ramp are outlined in yellow.

Plaintiff had been a regular patron of the restaurant since 1989, visiting the restaurant approximately once or twice a week. On the morning of March 26, 2000, plaintiff accompanied a handicapped acquaintance to the restaurant for breakfast. The acquaintance drove plaintiff's vehicle and parked in the first handicap space along the side of the building. Plaintiff exited the car on the passenger side, stepped over the yellow parking curb, and then stepped up onto the front sidewalk.

After breakfast, plaintiff walked out the front entrance of the restaurant and onto the sidewalk. Plaintiff decided to drive because her acquaintance was feeling ill. Rather than walk to the end of the sidewalk and then into the parking lot, plaintiff walked to the handicap ramp and cut across it in a diagonal direction. As she stepped down the slope on the side of the ramp and into the parking lot, she "felt like there was nothing there," lost her balance, and felt her foot "roll out from underneath" her. Plaintiff suffered a fractured ankle and an injured thumb.

Plaintiff filed suit against defendant, alleging that the handicap ramp was unreasonably dangerous because the slope of the side of the ramp was too steep. In her deposition, plaintiff testified that she was quite familiar with the handicap ramp and had walked on it before. She indicated that there were no holes, cracks, or defects in the ramp and that there were no snow or ice accumulations. Plaintiff also indicated that the ramp was outlined in yellow and highly visible.

Defendant moved for summary disposition, arguing that the alleged defective condition of the ramp was open and obvious and defendant did not have a duty to warn plaintiff of its presence or protect her against any risk of harm presented. In response, plaintiff submitted the affidavit of Michael Reilly, the City of Marysville Building Inspector. Reilly opined that the handicap ramp violated the "Michigan State Construction Code" and imposed an unreasonably high risk of harm to individuals.[1] Following a hearing on the motion, the trial court granted the motion. Citing *Lugo,* the court found that even if the ramp violated a building code, the slope of the ramp was open and obvious and did not present an unreasonable risk of harm.

Plaintiff argues that summary disposition was improper because the handicap ramp violated the state building code and therefore the open and obvious doctrine does not apply. Plaintiff also argues that summary disposition was improper because the danger posed by the ramp presented an unreasonable risk. We disagree. There is no genuine issue of material fact that an ordinary pedestrian should have been able to discover the need to step down from the edge of the ramp to the parking lot upon casual inspection of the ramp. Further, there are no circumstances that would indicate that the danger posed by the slope of the ramp was unavoidable or imposed an unreasonably high risk of severe harm. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). Even if the ramp may not have complied with the applicable building code, the nature of the ramp was open and obvious. Defendant had no duty to protect plaintiff against this open and obvious danger. *Lugo v Ameritech Corp*, 464 Mich 512, 516-517; 629 NW2d 384 (2001).[2]

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[1] In a letter written to defendant on November 7, 2000, Michael Reilly stated:

> Upon review, the handicapped ramp at the referenced location [Seros Restaurant] does not comply with the required standards. I have received a complaint regarding the slope of the ramp. Upon inspection, the side slopes exceed the design requirements and should be corrected. **While the building code does not require this correction,** you may be in violation of the Americans with Disabilities Act. As such, you may be subject to legal action under this act. [Emphasis added.]

[2] The existence of a building code violation, even if established, does not necessarily mean that an unreasonably dangerous condition exists, since building codes may require stricter safety guidelines than those required by our state's common-law tort jurisprudence. An invitor may be liable to the city or state for a code violation while at the same time remaining free from liability towards its invitees.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Richard Allen Griffin
/s/ Henry William Saad